

SECOND REGULAR SESSION

SENATE BILL NO. 1108

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 7, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4511S.02I

AN ACT

To repeal section 425.010, RSMo, and to enact in lieu thereof six new sections relating to debt settlement providers, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 425.010, RSMo, is repealed and six new sections
2 enacted in lieu thereof, to be known as sections 425.010, 425.350, 425.355,
3 425.360, 425.365, and 425.370, to read as follows:

425.010. As used in [this chapter] **sections 425.010 to 425.040**, the
2 following terms mean:

3 (1) "Debt adjuster", a person who acts or offers to act for a consideration
4 as an intermediary between a debtor and his creditors for the purpose of settling,
5 compounding, or in any wise altering the terms of payment of any debts of the
6 debtor; and to that end the person receives money or other property from the
7 debtor, or on behalf of the debtor, for payment to the debtor's credit by the
8 person, or distribution among, the creditors by the person. This definition shall
9 only apply to a person who collects funds from a debtor and delivers such funds
10 to the debtor's creditors;

11 (2) "Debt management plan" or "DMP", a written agreement or contract
12 between a debt adjuster and a debtor whereby the debt adjuster agrees to provide
13 its services as such to the debtor in return for payment by the debtor of no more
14 than reasonable consideration;

15 (3) "Debtor", an individual or individuals jointly and severally or jointly
16 or severally indebted;

17 (4) "Reasonable consideration", a fee or contribution to cover the cost of
18 administering a debt management plan, not to exceed:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (a) Fifty dollars for an initial or set-up fee or charge for establishing a
20 DMP; and

21 (b) The greater of thirty-five dollars per month or eight percent of the
22 amount distributed monthly to creditors under such DMP.

**425.350. As used in sections 425.350 to 425.370, the following
2 terms mean:**

3 (1) "Debt settlement plan", a written agreement or contract
4 between a debt settlement provider and a debtor whereby the debt
5 settlement provider agrees to provide its services as such to the debtor
6 in return for payment by the debtor of no more than reasonable
7 consideration;

8 (2) "Debt settlement provider", any person or entities engaging
9 in or holding himself or herself out as engaging in debt settlement
10 services for compensation. The term shall not include:

11 (a) Attorneys at law of the state;

12 (b) Any person, partnership, association, or corporation doing
13 business under and as permitted by any law of this state or of the
14 United States relating to banks, escrow agents, accountants, broker-
15 dealers in securities, or investment advisors in securities, while
16 performing services solely incidental to the practice of their
17 professions;

18 (c) Public officers while acting in their official capacities and
19 persons acting under court order;

20 (d) Any person while performing services incidental to the
21 dissolution, winding up or liquidating of a partnership, corporation, or
22 other business enterprise;

23 (e) Any person who is a regular, full time employee of a debtor,
24 and who negotiates or settles his employer's debts;

25 (f) Any person who is a creditor of the debtor, or an agent of one
26 or more creditors of the debtor, and whose services in settling the
27 debtors debts are rendered without cost to the debtor; or

28 (g) Any person who, at the request and authorization of a debtor,
29 negotiates and settles the debts without compensation for the services
30 rendered;

31 (3) "Debt settlement service", the negotiation, settlement, or
32 alteration of the terms of payment of a consumer's debt with the
33 consumer's creditor without receiving or holding of money from a

34 consumer for the purpose of distributing that money to the creditor;

35 (4) "Reasonable consideration", a fee charged to provide debt
36 settlement service not to exceed:

37 (a) Four percent of the principal amount of the debt enrolled in
38 the debt settlement plan as an enrollment or set up fee; and

39 (b) Twenty percent of the principal amount of the debt enrolled
40 in the debt settlement plan in aggregate fees, the balance minus the
41 enrollment fee of which shall be collected in equal payments over a
42 period to be determined by the provider as long as the last payment is
43 due no sooner than the median month in the plan. However, the debtor
44 may voluntarily accelerate or prepay any unpaid installment payment
45 of fees, and the provider may accelerate collection of fees on a pro rata
46 basis once the provider has obtained offers of settlement from creditors
47 for at least one-half of the debt included in the plan.

425.355. Any person who acts or offers to act as a debt settlement
2 provider in this state other than under a debt settlement plan shall be
3 subject to a civil penalty of no more than one thousand dollars per
4 violation and action may be brought on behalf of the state by the
5 attorney general.

425.360. Nothing in section 425.370 shall be construed to prevent
2 any individual or organization from administering a debt settlement
3 plan free of charge.

425.365. A debt settlement provider shall carry aggregate
2 umbrella insurance in the amount of at least one million dollars:

3 (1) Against the risks of dishonesty, fraud, theft, and other
4 misconduct on the part of the provider or a director, employee, or
5 agent of the provider;

6 (2) Issued by an insurance company authorized to do business in
7 this state and rated at least A by a nationally recognized rating
8 organization with a minimum deductible of ten thousand dollars;

9 (3) Insuring against claims made by or on behalf of individuals
10 in this or any other state as their interests may appear; and

11 (4) Not subject to cancellation by the provider without an
12 effective policy in place to cover the cancelled insurance.

425.370. A circuit court shall have power, in an action brought
2 in the name of the state by the attorney general, to:

3 (1) Enjoin any person from acting or offering to act as a debt

4 settlement provider;

5 (2) Order a debt settlement provider to correct any violation of
6 this section, including making restitution of money or property to a
7 person aggrieved by a violation; and

8 (3) Impose a civil penalty not to exceed one thousand dollars for
9 each violation.

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Unofficial

Bill

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